

ORIGINAL

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D. C.

OCT 4 - 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Streamlining the Commission's ) IB Docket No. 95-117  
Rules and Regulations for )  
Satellite Application and )  
Licensing Procedures )

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COMMENTS OF HOME BOX OFFICE

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HOME BOX OFFICE, a Division of Time Warner Entertainment Company, L.P. ("HBO"), hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> In the NPRM, the Commission has proposed to streamline or eliminate numerous rules currently applicable to satellite and earth station licensees.

I. STATEMENT OF INTEREST/INTRODUCTION

HBO has been a major user of satellite transmission capacity since the mid 1970s, and it has, for the most part, encouraged the deregulatory initiatives that the Commission has proposed in the satellite arena. In the Commission's Transponder Sales

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<sup>1</sup> Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Notice of Proposed Rulemaking, IB Docket No. 95-117, FCC 95-285 (Aug. 11, 1995) (the "NPRM").

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proceeding, for instance, HBO actively supported the applications of several satellite operators to modify the then-existing domestic satellite policies so that transponders could be sold or leased on a private basis, free from common carrier regulation.<sup>2</sup>

Today, HBO utilizes ten transponders on three domestic communications satellites and, either directly or through various partnerships, utilizes several additional transponders on a variety of international satellite systems.

In its NPRM, the Commission has proposed to streamline application and licensing procedures and requirements for satellite space and earth stations under Part 25 of the Commission's rules. The Commission anticipates that the proposals will allow service providers to operate without any unnecessary regulatory burdens or constraints and, hence, to respond more quickly to their customers' needs.

In particular, the Commission has proposed, among other things, (i) to waive the construction permit requirement for space stations and allow potential applicants to begin construction of their satellites at their own risk prior to receiving a license, (ii) to eliminate a number of unnecessary or redundant requirements for space station operators, (iii) to clarify the

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<sup>2</sup> See Domestic Fixed Satellite Transponder Sales, 90 FCC 2d 1238, 52 RR 2d 79 (1982) ("Transponder Sales"). HBO also supported the Commission's deregulation of satellite receive-only earth station authorizations, see Domestic Receive-Only Satellite Earth Stations, 46 RR 2d 698 (1979), as well as the Commission's decision to refrain from regulating satellite encryption technologies, see Satellite Cable Programming (Universal Encryption Standard), 5 FCC Rcd 2710, 67 RR 2d 967 (1990).

rules in order to provide applicants with greater guidance and direction and make the application process more efficient, (iv) to reduce the reporting requirements for space stations in the fixed-satellite service, and (v) to eliminate the requirement to file an application for authority to operate a geostationary satellite in an inclined orbit.

As more fully set forth below, HBO generally supports the three-prong goal of eliminating outdated and cumbersome satellite regulatory requirements, reducing unnecessary paperwork for satellite applicants, and increasing the efficiency of space and earth station licensing. With respect to the Commission's proposal to eliminate the application requirements for inclined orbit operations, however, HBO believes certain clarifications and modifications are necessary to address the needs of satellite users, to ensure that inclined orbit satellites do not hinder the development of newer satellites, and to clarify the non-interference obligations of licensees of inclined orbit satellites

**II. HBO FAVORS THE COMMISSION'S PROPOSAL TO ELIMINATE THE APPLICATION REQUIREMENTS FOR INCLINED ORBIT OPERATIONS, SUBJECT TO CERTAIN MODIFICATIONS.**

Currently, the Commission's rules require that applicants who wish to operate their satellites in an inclined orbit mode must file an application for license modification in conformity with Part 25. The Commission routinely has approved these applications and authorized the use of inclined orbit operation to extend the operational lifetime of older satellites until state-of-the-art

satellites authorized to operate from the same location are ready to be launched.<sup>3</sup> These temporary authorizations, however, were not intended to impede the introduction of new satellite technology.

The new rule section 25.280 proposed in the NPRM would permit satellite licensees to commence operation of their satellites in an inclined orbit mode without obtaining prior Commission authorization provided that the Commission is notified by letter within 30 days after inclined orbit operations commence. The notification would include (1) the date of commencement of inclined orbit operation, (2) the initial inclination, (3) the rate of change in inclination per year, and (4) the expected end-of-life of the satellite accounting for inclined orbit operation.

HBO agrees with the Commission that the current requirement to file an application for authority to operate geostationary satellites in an inclined orbit is unnecessary. HBO proposes, however, to modify proposed section 25.280 to (i) require a thirty-day prior notification, (ii) clarify that operation in inclined orbit mode does not automatically extend the spacecraft's license term, and (iii) include specific conditions in the rule for operating in the inclined orbit mode.

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<sup>3</sup> See GTE Spacenet Corporation, Application to Modify Temporary Authority for GSTAR III Satellite, 8 FCC Rcd 3078, 1993 FCC LEXIS 2212 (1993) (citing Comsat General Corporation, 4 FCC Rcd 3820 (Com. Car. Bur. 1989)) ("GTE Spacenet").

A. The Commission Should Require Licensees to Provide Thirty Days' Prior Notice Before Commencing an Inclined Orbit Operation.

Although HBO does not believe it is necessary for satellite licensees to obtain prior approval from the Commission before commencing inclined orbit operations, HBO submits that licensees should provide thirty days' prior notice of such operation to the Commission and the affected satellite customers. A prior notice requirement would provide the licensee's customers an opportunity to notify their own customers and make any necessary changes in their own networks to minimize the effects of inclined orbit operations and, if necessary, to make alternative satellite arrangements. If no customer objects to the proposed operation within the thirty-day notice period, the licensee should be permitted to begin inclined orbit operations without further action by the Commission.

B. The Commission Should Clarify that Operation in Inclined Orbit Does not Guarantee Any Predetermined Extension of the Term of the Satellite License.

The proposed rules are unclear with respect to the effect of inclined orbit operations on the satellite's license term. Accordingly, HBO urges the Commission to clarify that inclined orbit operations do not automatically extend the license term of the relevant satellite for a predetermined period of time. If inclined orbit operations will extend a satellite's life beyond the ten-year license term, any such extension should be subject to

immediate cessation or cancellation in the event (a) the conditions set forth in section 25.280 are violated, (b) the Commission finds it necessary to accommodate more efficient satellites or state-of-the-art technology, or (c) the satellite's orbital location is to be occupied by a non-inclined orbit satellite to which the location has been assigned. In no event should a satellite operating in inclined orbit be permitted to foreclose or delay the use of an orbital location by a state-of-the-art satellite that would provide service in a full stationkeeping mode.

C. The Commission Should Impose Certain Conditions on Satellite Operators Who Wish to Operate Their Satellites In Inclined Orbit Mode.

Currently, the authorizations issued by the Commission to permit operation in inclined orbit generally have included, among other things, a condition rendering the authorization subject to cancellation without a hearing should the Commission find it necessary to accommodate more efficient satellites, or if, in the opinion of the Commission, circumstances should so require.<sup>4</sup>

Moreover, in prior authorizations allowing inclined orbit operations, the Commission has conditioned such authorizations, inter alia, on the following:

- a. the licensee must periodically correct the satellite attitude to achieve a stationary spacecraft antenna

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<sup>4</sup> See GTE Spacenet, 8 FCC Rcd 3078 (citing GTE Spacenet

pattern on the surface of the Earth and centered on the satellite's designated service area;

- b. the licensee must control all interference to adjacent satellites, as a result of operating in an inclined orbit, to levels not to exceed that which would be caused by the satellite network operating without an inclined orbit;
- c. the licensee cannot claim protection in excess of the protection that would be received by the satellite network operating without an inclined orbit; and
- d. the licensee must continue to maintain the space station at the authorized longitude orbital location in the geostationary satellite arc with the appropriate east-west stationkeeping tolerance.<sup>5</sup>

HBO submits that section 25.280 should be modified to include these conditions which the Commission has routinely and appropriately attached to authorizations for inclined orbit

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Corporation, 5 FCC Rcd 1182 (Com. Car. Bur. 1990)).

<sup>5</sup> See, e.g., AT&T Application for Modification of the Telstar 302 Domestic Fixed Satellite License and Application for Special Temporary Authority for the Telstar 302 Domestic Fixed-Satellite, 10 FCC Rcd 3803, 1995 FCC LEXIS 2329 (1995); Hughes Communications, Application for Modification of the SBS-4 Domestic Fixed Satellite License, 9 FCC Rcd 2155, 1994 FCC LEXIS 2041 (1994).

operations. These conditions will ensure that satellites in inclined orbit do not cause interference or harm to adjacent satellites and their users. HBO agrees with the Commission that there is no need to impose north/south excursion limitations on satellites operating in an inclined orbit mode.<sup>6</sup>

Finally, the Commission should clarify that licensees who wish to commence operation of their satellites in an inclined orbit mode under the proposed notification procedure may do so only at the orbital location assigned to the satellites. Inclined orbit operations in an orbital location other than that originally assigned would require prior authorization from the Commission.

### **III. CONCLUSION**

HBO commends the Commission's efforts to streamline its satellite regulatory requirements. The Commission, however, should modify proposed section 25.280 in conformity with HBO's

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<sup>6</sup> Previously, the Commission generally imposed inclination excursion limitations of up to five degrees. The five degrees inclination excursion limitation was based on the former International Frequency Registration Board's ("IFRB") interpretation of the definition of a geostationary satellite set out in the International Telecommunication Union ("ITU") Radio Regulations. The IFRB has decided to change its interpretation regarding the five degrees inclination excursion limitation for the geostationary satellite orbit.



comments to more appropriately address the needs of the Commission and the satellite owners and their customers.

Respectfully submitted,

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October 4, 1995

**CERTIFICATE OF SERVICE**

I, Regina Alston, hereby certify that a copy of the foregoing Comments of Home Box Office was hand-delivered on this 4th day of October, 1995, to the following:

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